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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,309	09/19/2003	Thomas E. Creamer	BOC9-2003-0023 (392)	7918

40987 7590 03/26/2008
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EXAMINER	
PARK, JEONG S	

ART UNIT	PAPER NUMBER
2154	

MAIL DATE	DELIVERY MODE
03/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/666,309	CREAMER ET AL.	
	Examiner	Art Unit	
	JEONG S. PARK	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-14,16-18 and 20-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-14, 16-18 and 20-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 December 2007 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Regarding claims 14, 16-18 and 20-25, the term "computer-readable storage medium" is not properly supported within the specification.

Claim Objections

3. Claims 1, 2, 4-14, 16-18 and 20-25 are objected to because of the following informalities:

In claim 1, line 8, the phrase "said associated ghost software object" should be corrected as –said attached ghost software object-- for clear understanding of the claim. Similar correction should be made for claims 10 and 17;

In claim 7, line 5, the phrase "said dissassociated ghost software object" should be corrected as –said disassociated ghost software object-- for proper English. Similar

correction should be made for claim 23; and

In claim 14, line 8, the phrase "said activites" should be corrected as –said activities-- for proper English. Similar correction should be made for claim 23.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10, 11 and 23 are drawn toward a system comprising an application domain, which can reasonably be construed as software alone. As such, the system fails to establish a statutory category of invention as being software, per se. Correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 2, 4-13, 17, 18 and 20-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said host software actions" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said linked ghost software object" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "said linked ghost software object" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said host software actions" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said linked ghost software object" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 5-10, 14, 16, 17 and 21-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 5 and 8-10 of U.S. Patent No. 7,337,363 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims teach all the limitations of the applicant's claims as listed below.

Regarding claims 1, 10, 14 and 17, the patented claim 1 teaches as follows:

A method for computing within a grid environment comprising the steps of:

determining a statistically relevant number of ghost agents in said grid environment;

modeling delays associated with the statistically relevant number of ghost agents executing ghost software objects that consume limited computing resources in the grid environment;

identifying a host software object operating in one grid of said grid environment; creating a ghost software object within the one grid;

associating said ghost software object with said host software object, wherein said ghost software object is configured to replicate and record at least one action of said host software object;

identifying passive and active interactions between said ghost software object and said host software object that consume the limited computing resources and induce the delays;

triggering either a transfer of the ghost software object or a cloning of the ghost software object in view of the passive and active interactions;

moving said host software object from the one grid to another grid within said grid environment; and

in response to said moving of said host software object, moving said associated ghost software object from said one grid to said another grid.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the patented claims to include a system and a computer-readable storage medium comprising the same limitations of patented claim 1.

Regarding claims 5 and 21, the patented claim 4 teaches as follows:

Wherein said ghost software object is passive, said method further comprising the step of preventing said at least one replicated action by said ghost software object from operationally executing in said grid environment.

Regarding claims 6 and 22, the patented claim 5 teaches as follows:

Determining a location for logging data that is external to said ghost software object; and

conveying said at least one replicated and recorded action to said determined location.

Regarding claims 7, 16 and 23, the patented claim 9 teaches as follows:

Disassociating said ghost software object from said host software object; and, associating said disassociated software object with a different host software object.

Regarding claims 8 and 24, the patented claim 10 teaches as follows:

Cloning said associated ghost software object to create another ghost software object, wherein said another ghost software object is a copy of said associated ghost

software object; and

associating said another ghost software object with a different host software object.

Regarding claims 9 and 25, the patented claim 8 teaches as follows:

Selecting a plurality of host software objects;

for each one of the selected plurality of host software objects, repeating said identifying step, said creating step, said associating step and said moving step; and

modeling behavior of at least a part of said grid environment using data obtained from a plurality of ghost software objects associated with said selected plurality of host software objects.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEONG S. PARK whose telephone number is (571)270-1597. The examiner can normally be reached on Monday through Friday 7:00 - 3:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. P./
Examiner, Art Unit 2154

March 11, 2008

/Joseph E. Avellino/
Primary Examiner, Art Unit 2143